

ORIGINAL

FORMAL COMPLAINT



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AZ CORP COMMISSION
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Arizona Corporation Commission

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DOCKETED BY <i>John</i>	<i>MLL</i>
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Attorneys for HP Investment
Corporation

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE COMPLAINT
OF HP INVESTMENT CORPORATION
AGAINST APPALOOSA WATER
COMPANY FOR FAILURE TO
COMPLY WITH THE ARIZONA
CORPORATION COMMISSION'S
ORDERS, RULES AND REGULATIONS

DOCKET NO. W-03443A-06-0713

COMPLAINT

HP Investment Corporation ("HP Investment"), an Arizona corporation qualified to do business in Arizona, for its Complaint against Appaloosa Water Company ("Appaloosa"), an Arizona public service corporation, alleges:

1. The Arizona Corporation Commission ("Commission") has jurisdiction, pursuant to A.R.S. § 40-246, to hear complaints against public service corporations for any alleged failure to comply with the Commission's orders, rules and/or regulations. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. Respondent Appaloosa is a public service corporation as defined by Article XV of the Arizona Constitution, and holds a Certificate of Convenience and Necessity ("CC&N") issued pursuant to A.R.S. §§4-281 and 40-282. Appaloosa was issued its

1 CC&N to provide water service in Yavapai County, Arizona, pursuant to Decision No.
2 60733 (March 23, 1998). As a condition of its CC&N, Appaloosa is required to comply
3 with Arizona law, Commission orders, rules and regulations, and has an obligation to
4 serve customers within its CC&N.

5 3. HP Investment purchased a tract of land originally known as Appaloosa
6 Meadows Phase III ("Property"). The Property is entirely within Appaloosa's service
7 area, and is one of three phases of development in Appaloosa Meadows that generated the
8 need for an initial CC&N. HP Investment entered into negotiations with Appaloosa to
9 bring water service to the Property.

10 4. Appaloosa had previously issued a Notice of Intent to Serve water to
11 Appaloosa Meadows (a developer) on a form provided by the Arizona Department of
12 Water Resources ("ADWR") for the purpose of obtaining a Certificate of Assured Water
13 Supply for Appaloosa Meadows Phases I, II and III. That form was executed by
14 Mr. Harold Friend, as authorized agent for Appaloosa, and dated August 7, 1997. A copy
15 of that signed Notice of Intent to Serve is attached hereto as **Exhibit A** and incorporated
16 herein by reference.

17 5. ADWR issued a Certificate of Assured Water Supply for Appaloosa
18 Meadows, Phases I, II and III on January 16, 1998. A copy of that certificate is attached
19 hereto as **Exhibit B** and incorporated herein by reference. The certificate was issued to
20 F & F Capital Investment, Inc.

21 6. The final plat for the Property has been approved by the Town of Chino
22 Valley, but not yet recorded in the official records of Yavapai County, Arizona.
23 HP Investment was prepared to begin development of the land for a residential
24 subdivision, and to that end, engaged Mr. Friend in negotiations to prepare and execute a
25 main extension agreement to bring water infrastructure from the existing Appaloosa
26 distribution system into the Property. A draft main extension agreement was negotiated,

1 but was never executed. A copy of the draft main extension agreement is attached hereto,
2 together with a cover letter from Mr. Friend dated June 23, 2005, as **Exhibit C** and
3 incorporated herein by reference.

4 7. HP Investment is informed and believes, and therefore alleges, that
5 Mr. Friend sold Appaloosa to a Mr. Joseph Cordovana sometime in 2006. Mr. Cordovana
6 filed a Corporation Statement of Change of Known Place of Business or Statutory Agent
7 form with the Commission on June 6, 2006, but other details of the transaction are
8 unknown to HP Investment. Mr. Cordovana now holds himself out as the owner of
9 Appaloosa.

10 8. HP Investment has a purchaser for the Property, and is desirous of closing a
11 sale transaction. The sale is conditioned upon HP Investment obtaining a new Certificate
12 of Assured Water Supply from ADWR in the name of HP Investment and the purchaser,
13 and is also contingent upon the purchaser obtaining an executed main extension
14 agreement from Appaloosa.

15 9. To meet the conditions of closing, HP Investment has approached
16 Mr. Cordovana to obtain a new Notice of Intent to Serve form for ADWR, so that ADWR
17 may process the new Certificate of Assured Water Supply. ADWR has indicated to
18 HP Investment that it is prepared to issue the new certificate upon receipt of the signed
19 Notice of Intent to Serve. HP Investment has also approached Mr. Cordovana to finalize
20 the main extension agreement, and execute that agreement in the name of the purchaser.

21 10. Mr. Cordovana has repeatedly refused to sign the Notice of Intent to Serve
22 form, or enter into a main extension agreement with HP Investment. Despite holding
23 himself out as the sole shareholder of Appaloosa, Mr. Cordovana continues to require the
24 "consent" of Mr. Friend before signing a Notice of Intent to Serve, or entering into a main
25 extension agreement, on behalf of Appaloosa. Mr. Friend has advised HP Investment
26 representatives that he is willing to provide his consent in exchange for monetary

1 consideration. While Mr. Friend's existing relationship to Appaloosa and Mr. Cordovana
2 remains unclear, Mr. Cordovana (owner, manager of Appaloosa) continues to refuse to
3 extend water service to a property owner within the CC&N, on reasonable terms
4 consistent with Commission rules and regulations. Appaloosa's continued refusal is in
5 violation of the Commission's order granting the CC&N, as well as its rules and
6 regulations.

7 **COMPLAINT**

8 **Count One**

9 **(Violation of Commission Order – Decision No. 60733)**

10 11. HP Investment incorporates the allegations of Paragraphs 1 - 10 into this
11 count.

12 12. Decision No. 60733 states that "The public convenience and necessity
13 require the issuance of a Certificate to Applicant [Appaloosa] authorizing it to provide
14 water service to the public in the area sought to be certificated herein." See Decision No.
15 60733, Conclusions of Law at ¶ 5. In exchange for the exclusive right to provide
16 domestic water service within its CC&N, Appaloosa also has an obligation to serve. By
17 refusing to enter into a main extension agreement and delivering a Notice of Intent to
18 Serve upon written request by HP Investment, Appaloosa is violating its obligation to
19 serve pursuant to the CC&N granted in Decision No. 60733.

20 **Count Two**

21 **(Violation of A.R.S. § 40-321(B))**

22 13. HP Investment incorporates the allegations of Paragraphs 1 - 12 into this
23 count.

24 14. Under A.R.S. § 40-321(B), except as provided in the Commission's rules,
25 Appaloosa is required to provide service to any applicant within its service area who
26 makes a "proper demand and tender of rates." By making a request for service,

1 HP Investment has made a "proper demand and tender of rates" as contemplated by
2 A.R.S. § 40-321(B). By failing to provide service to customers who have made a proper
3 demand and tender of rates, Appaloosa is in violation of A.R.S. § 40-321(B).

4 **Count Three**

5 **(Violation of A.A.C. R14-2-406(J))**

6 15. HP Investment incorporates the allegations of Paragraphs 1 - 14 into this
7 count.

8 16. A.A.C. R14-2-406(J) requires utilities to schedule all new requests for main
9 line extensions, and provide service under main line extension agreements, promptly and
10 in the order received. Appaloosa has not responded promptly to HP Investment's
11 inquiries regarding the processing of main line extensions. The failure by Appaloosa to
12 schedule HP Investment's request for a main line extension, and for service under a main
13 line extension agreement, is a violation of A.A.C. R14-2-406(J).

14 **Count Four**

15 **(Violation of A.R.S. § 40-202(L))**

16 17. HP Investment incorporates the allegations of Paragraphs 1 - 16 into this
17 count.

18 18. A.R.S. § 40-202(L) requires Appaloosa "to comply with every order,
19 decision, rule or regulation made by the commission in any matter relating to or affecting
20 its business as a public service corporation and shall do everything necessary to secure
21 compliance with and observance of every such order, decision, rule or regulation." The
22 refusal by Appaloosa to enter into a main extension agreement, upon reasonable terms
23 consistent with Commission rules and regulations, constitutes a violation of Decision No.
24 60733, A.R.S. § 40-321(B) and A.A.C. R14-2-406. By failing to comply with every
25 Commission order, rule or regulation, Appaloosa is in violation of A.R.S. § 40-202(L).

1 **RELIEF REQUESTED**

2 WHEREFORE, HP Investment respectfully requests that the Commission issue an
3 Order directing Appaloosa to:

4 A. Promptly provide HP Investment a written Notice of Intent to Serve, or
5 other similar document acknowledging that Appaloosa will provide water service to the
6 Property, on reasonable terms and conditions;

7 B. Enter into a main extension agreement with HP Investment for the extension
8 of water service to the Property, in a form identical or similar to the agreement negotiated
9 with Appaloosa's previous owner, and attached hereto as Exhibit C; and

10 C. Any other such relief that the Commission deems proper and necessary to
11 preserve the public convenience and necessity.

12 DATED this 7th day of November, 2006.

13 FENNEMORE CRAIG, P.C.

14
15 By 

16 Michael J. Pearce
17 Patrick J. Black
18 Attorneys for HP Investment Corporation

19 Original and thirteen (13) copies
20 of the foregoing were filed this
21 7th day of November 2006 with:

22 Docket Control
23 Arizona Corporation Commission
24 1200 West Washington Street
25 Phoenix, AZ 85007
26

1 Copy of the foregoing hand-delivered
2 This 7th day of November, 2006, to:

3 Ernest Johnson, Director
4 Utilities Division
5 Arizona Corporation Commission
6 1200 W. Washington Street
7 Phoenix, Arizona 85007

8 Connie Walczak, Consumer Services Division
9 Utilities Division
10 Arizona Corporation Commission
11 1200 W. Washington Street
12 Phoenix, Arizona 85007

13 Copy of the foregoing mailed certified
14 this 7th day of November 2006 to:

15 Appaloosa Water Company
16 c/o Joseph Cordovana
17 1228 West Road 4 North
18 Chino Valley, AZ 86323

19 By: Maria San Jose

20 1850443.2/18563.001

Exhibit A

ARIZONA DEPARTMENT OF WATER RESOURCES
OFFICE OF ASSURED WATER SUPPLY
300 NORTH THIRD STREET
PHOENIX, ARIZONA 85004
(602) 417-2460

SUPPLEMENT TO APPLICATION FOR AN ASSURED WATER SUPPLY OR
A WATER ADEQUACY REPORT

NOTICE OF INTENT TO SERVE

Subdivision/Development Name: Appaloosa Meadows

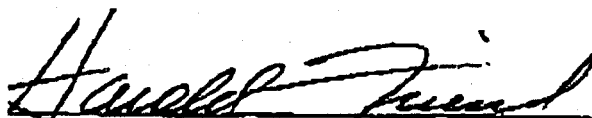
The undersigned municipal water provider agrees to provide to the development indicated above an amount of water sufficient to satisfy the water demands of the development as stated in the application for an assured water supply or water adequacy. This Notice of Intent to Serve is conditioned upon the provider's receipt of necessary approvals from the Arizona Corporation Commission and other regulatory agencies, and the provider's receipt of all necessary payments.

The municipal water provider, if a private water company, further attests that the subject development is either within the boundaries of the company's existing Certificate of Convenience and Necessity or that a formal request has been filed with the Arizona Corporation Commission to extend the boundaries to include the development.

This Notice of Intent to Serve Agreement is agreed to under the signature of an agent of the municipal water provider authorized to sign the agreement.

Municipal Water Provider Name (please type or print): Appaloosa Water Company

Name of Municipal Water Provider's authorized agent (please type or print): Harold Friend


Signature of Authorized Harold Friend, President
Agent of Municipal Water Provider

August 7, 1997
Date

Exhibit B

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
CERTIFICATE OF ASSURED WATER SUPPLY

This is to certify that

F & F Capital Investment, Inc.
Appaloosa Meadows Phases I, II and III (DWR No. 27-300352)
Sections 9 and 10 Township 16 North, Range 2 West G&SRB&M
Yavapai County
Prescott Active Management Area

has demonstrated to the Arizona Department of Water Resources, in accordance with the requirements and procedures of A.R.S. §45-576 and the applicable regulations, that sufficient water of adequate quality will be continuously available to satisfy the water needs of the referenced subdivision for at least one hundred years. The aforementioned subdivision consists of 318 lots as described in the preliminary plat on file with the Department which will be served groundwater by the Appaloosa Water Company.

This Certificate is invalid as to any successor in interest, assignee, or grantee of the owner indicated above. A subsequent owner of the property may apply for a new certificate pursuant to Rule R12-15-708, within 90 days of the change of ownership.

By powers vested in the Director of the Arizona Department of Water Resources by the State of Arizona, and subject to the conditions contained in the applicable regulations,

F & F Capital Investment, Inc.

is issued this certificate of Assured Water Supply for

Appaloosa Meadows Phases I, II and III

ARIZONA DEPARTMENT OF WATER RESOURCES



Rita P. Pearson
DIRECTOR

this 16th day of January, 19 98

Exhibit C

HAROLD FRIEND

June 23, 2005

Paul Aslanian
Arizona Land Development Company II L.L.C.
P.O. Box 5038
Chino Valley, Az. 86323


Dear Mr. Aslanian:

Enclosed herewith please find a copy of the "Line Extension Agreement for Developer Installed Facilities".

Please review this agreement so that Mr. Milus and myself can contact you Tuesday, June 28th for discussion.

Thank you for your attention to this matter and we look forward to talking with you next week.

Best regards,



Harold Friend
President

HF:mw

**LINE EXTENSION AGREEMENT
FOR DEVELOPER INSTALLED FACILITIES**

This LINE EXTENSION AGREEMENT (the "Agreement"), entered into this _____ day of _____ (the "Effective Date"), by and between Appaloosa Water Company (the "Company") and Arizona Land Development Company II, LLC (the "Developer"), is for the construction of water lines and related facilities necessary to provide water utility service to each lot within the development known as Heritage Pointe (formerly a part of Appaloosa Meadows Phase III) (the "Development").

RECITALS:

WHEREAS, the Company owns and operates a public service corporation and holds a Certificate of Convenience and Necessity ("CC&N") authorizing it to serve the public with water; and

WHEREAS, the Developer is developing the Development which consists of 75 residential lots within the geographic area covered by Company's CC&N, which Development is more fully described in Attachment 1 hereto and incorporated herein by reference for all purposes; and

WHEREAS, the Company presently owns and operates a water distribution system that can be extended to serve the Development, and the Developer desires that the Company provide water service to the Development.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

I. WATER FACILITIES; INCOME TAXES; GROUNDWATER REPLENISHMENT DISTRICT; REIMBURSEMENT FOR ADMINISTRATIVE COSTS.

A. Water Facilities. Developer, at its sole expense, shall construct and install, or shall cause to be constructed and installed, the water mains, water lines, the fire hydrants, and all other improvements (collectively, the "Water Facilities") necessary for the Company to provide potable water service to customers within the Development. The Water Facilities to be constructed and/or installed hereunder are fully described in those certain plans and specifications ("Plans and Specifications") prepared by Kelly Wise Engineering and entitled "*Street, Drainage and Water Improvement Plans for Heritage Pointe*" dated November 19, 2004. The cost of constructing the Water Facilities shall be treated as an Advance subject to refund in accordance with Paragraph VII of this Agreement.

B. Minimum System Flow Design. The Water Facilities, shall be designed to deliver a minimum flow rate as required by governmental authorities. Developer, at its sole cost, shall cause to be installed pressure reducing valves (PRVs) on all houses constructed by Developer as required by governmental authorities. Any amounts paid by Developer under this Paragraph II.B shall be treated as an Advance subject to refund in accordance with Paragraph VII of this Agreement.

C. Income Taxes. In the event it is determined by Congress, the Internal Revenue Service (IRC Section 118), the Arizona Legislature or Arizona Department of Revenue that all or any portion of the amounts advanced by Developer under this Agreement constitutes taxable income to the Company, then Developer shall contribute the applicable income taxes as a nonrefundable contribution in aid of construction for the Company's Arizona and/or federal tax liability. These funds shall be payable by the Developer to the Company within thirty (30) days after written notification to the Developer of the determination by the appropriate agency having jurisdiction.

D. Groundwater Replenishment District. In the event Developer enrolls, or applies to enroll, any lots or parcels within the Development as "membership land" in the Central Arizona Groundwater Replenishment District (the "GRD") pursuant to ARS §§ 48-3701 *et seq.*, or such lots or parcels in any way become subject to ARS §§ 48-3701 *et seq.*, or any amendment thereto, then Developer shall pay, in addition to all other terms, conditions, rates and charges set forth in this Agreement, a one-time lump-sum charge of \$2,000.00 to the Company for the establishment of the reporting procedure mandated by the GRD. Payment of the charge shall be made within five (5) days of the date the Development is enrolled in or becomes subject to the GRD, and the charge shall be treated as an Advance subject to refund in accordance with Paragraph VII of this Agreement. For each lot or parcel within the Development that becomes subject to the GRD, the Developer shall provide to the Company the following information: (i) the legal description of the lot or parcel; (ii) the tax parcel number assigned to the lot or parcel by the applicable taxing authority; (iii) the street address of the lot or parcel; and (iv) any other information necessary for the Company to comply with the requirements of the GRD.

E. Reimbursement for Administrative Costs. Developer shall reimburse the Company for the Company's reasonable fees, costs and expenses incurred in connection with the preparation of this Agreement and other necessary legal services, inspection and testing of the Water Facilities during their construction, and other fees, costs and expenses reasonably and necessarily incurred by the Company with respect to the Development during the course of construction (collectively, the "Administrative Costs"). Any amounts paid by Developer as reimbursement for Administrative Costs shall be treated as an Advance subject to refund in accordance with Paragraph VII of this Agreement.

II. SERVICE; COMPANY LIABILITY LIMITATIONS; APPLICABLE RATES; COMPANY'S OBLIGATION TO SERVE.

A. Service. Notwithstanding any reference to fire protection facilities contained in the Plans and Specifications, the Water Facilities are being installed primarily for the purpose of providing domestic water service to the Development.

B. Company Liability Limitations. It is understood between the Developer and the Company that THE COMPANY DOES NOT GUARANTEE OR INSURE UNINTERRUPTED OR REGULAR FIRE PROTECTION SERVICE, NOR DOES THE COMPANY REPRESENT THE PRESENCE OF ADEQUATE PRESSURE, VOLUME, OR FIRE FLOW AVAILABLE ON THE SYSTEM BY OFFERING WATER SERVICE AS SPECIFIED HEREIN.

It is agreed that in the event service from the fire hydrants or an interior fire sprinkler system is used for non-fire protection purposes, or is interrupted or is irregular or defective or fails from causes beyond the Company's control or through negligence or alleged negligence of its employees, servants or agents, the Company shall not be liable for any injuries or damages arising therefrom. Further, the Company shall have neither the responsibility nor the liability for any use or disposition of fire hydrant or fire sprinkler water, even if such use or disposition is attributable, or is alleged to be attributable to the negligence of the Company's employees, agents or servants. The Developer, or any other person who succeeds to Developer's interest, REGARDLESS OF WHETHER SUCH PERSON HAS KNOWLEDGE OR NOTICE OF THESE TERMS, shall make no claim against the Company for any such loss or damage resulting from services provided under this Agreement or the applicable service tariff. The Company shall be entitled to recover its reasonable attorneys' fees should the Developer fail to comply with this provision.

C. Applicable Rates. It is mutually understood and agreed that the charges for water services for construction water for the Development and to service property owners in the Development shall be at the applicable rates of the Company which are currently on file with the Arizona Corporation Commission (the "Commission"). Those rates are subject to change from time to time upon application of the Company and as approved by the Commission.

D. Company's Obligation to Serve. Company shall have no obligation to accept and operate the Water Facilities to be constructed in the event Developer fails to make any payment provided in this Agreement; fails to complete the construction and installation of the Water Facilities in accordance with the Plans and Specifications as referenced in Paragraph I.A. above; fails to provide the bill of sale as required in Paragraph III.B., the invoices as required in Paragraph VI.A., the lien waivers as required in Paragraph VI.B., or the as-built plans as required in Paragraph VI.C.; or otherwise fails to comply with any of the terms and conditions of this Agreement in any material respect.

III. PERMITS AND LICENSES; TRANSFER OF OWNERSHIP.

A. **Permits and Licenses.** Developer shall obtain, at its own expense, all licenses, permits, certificates and approvals from public authorities which may be required for Developer's construction of the Water Facilities, under this Agreement. Developer shall comply with all applicable federal, state and local laws, ordinances and requirements.

B. **Transfer of Ownership.** Upon completion, testing and final inspection of the Water Facilities by the Company, the Company shall issue a written notice of acceptance to Developer. Within seven (7) days following the receipt of the Company's written notice of acceptance, Developer shall convey to the Company, via bill of sale in the form set forth in Attachment 3, the Water Facilities together with any permanent easements and/or rights-of-way required hereunder. Water Facilities so transferred shall thereafter become and remain the sole property and responsibility of the Company. Developer covenants and agrees that, at the time of transfer, the Water Facilities shall be free and clear of all liens and encumbrances, and Developer shall provide evidence in the form of lien waivers or other appropriate documents reasonably satisfactory to the Company that all claims of contractors, subcontractors, mechanics and materialmen have been paid and are fully satisfied. Developer agrees to execute or cause to be executed promptly such documents as counsel for the Company may reasonably request in order to effect the transfer of the Water Facilities.

IV. COMMENCEMENT OF PERFORMANCE AND TIME OF COMPLETION; PLANS AND SPECIFICATIONS; MATERIALS AND WORKMANSHIP; WARRANTY; LICENSED CONTRACTORS; CONNECTING NEW FACILITIES; EXISTING UNDERGROUND FACILITIES RESPONSIBILITIES; PUBLIC STREETS AND RIGHTS-OF-WAY; EASEMENTS; SPACING OF LINES.

A. **Commencement of Performance and Time of Completion.** It is estimated that the Developer shall start the work to be performed under this Agreement on or about _____ and will complete the work to be performed under this Agreement prior to _____. Failure to meet these estimated start dates and completion dates shall in no way relieve the Developer of any of its obligations under this Agreement.

B. **Plans and Specifications.** The Water Facilities shall be constructed (i) in substantial conformity with the Plans and Specifications, (ii) in accordance with sound utility engineering practices, and (iii) in compliance with all applicable rules, regulations and requirements of regulatory agencies having jurisdiction over construction of the Water Facilities, including the American Water Works Association, the Commission, the Arizona Department of Environmental Quality, the

Arizona Department of Water Resources, and all local regulatory agencies. The Plans and Specifications for the Water Facilities to be constructed hereunder by Developer are incorporated herein by reference and made part of this Agreement.

C. Materials and Workmanship; Warranty; Licensed Contractors.

All materials used in the construction of the Water Facilities, shall be new, and the workmanship and materials shall be of good quality. The Developer shall repair, or remove and replace, at Developer's own expense and at the Company's convenience, workmanship or materials which prove to be defective at any time after the date Developer conveys the Water Facilities to the Company pursuant to Paragraph III.B. All contractors employed by Developer shall be licensed and in good standing with the Arizona Registrar of Contractors and qualified in construction of public water systems.

D. Connecting New Facilities. The Water Facilities constructed by Developer pursuant to the Agreement shall not be connected to the Company's existing facilities without ADEQ's approval to operate the Water Facilities and without the prior written approval of Company, which approval shall not be unreasonably withheld.

E. Existing Underground Facilities Responsibility. Developer shall comply with A.R.S. §§ 40-360.21 *et seq.*, and related local regulations, and will assume all costs and liabilities associated with (1) coordination with the owners or their agents of all underground facilities within and adjacent to the Development regarding the location of such facilities, and (2) construction near, or damage to, such underground facilities. Developer will conduct, or cause to be conducted, all excavation in a careful and prudent manner in its construction of all Water Facilities subject to this Agreement.

F. Public Streets and Rights-of-Way; Easements; Spacing of Lines. At the time of transfer of ownership of any Water Facilities, Developer shall provide Company with evidence that all distribution mains and service lines within the Development are located within dedicated streets and/or public rights-of-way or other permanent easements provided for that purpose. In the event that any Water Facilities are not located within dedicated streets and/or public rights-of-way, then at the time of transfer of ownership of such Water Facilities, Developer shall grant to Company, or shall cause to be granted to Company, easements and/or rights-of-way, free from all liens and security interests thereon, and in a form that is satisfactory to Company, over, under, and across all pipeline routes and all portions of the Development necessary to operate, maintain and repair such Water Facilities. Unless otherwise agreed upon in writing, such easements and/or rights-of-way within the Development shall be free of physical encroachments, encumbrances and obstacles, and shall have a minimum width of ten (10) feet. The distribution mains and service lines constructed and installed by Developer within the Development shall be separated by a reasonable distance from other utility lines and facilities to prevent

damage or conflicts in the event of repairs or maintenance and to comply with applicable laws and regulations.

V. INSPECTION AND TESTING; CORRECTION OF DEFECTS.

A. **Inspection and Testing.** Developer shall comply with the inspection and testing requirements of the Company for the Water Facilities to be constructed hereunder; provided, however, that such requirements shall be reasonable and shall not cause Developer unwarranted delays in the ordinary course of construction. Developer shall notify the Company when the Water Facilities (or any portion thereof) under construction are ready for inspection and testing, and the Company shall complete its inspection within five (5) business days from the time of the notice. In the event the Company does not inspect the Water Facilities (or any portion thereof) within such five (5) business day period, then the Company's right of inspection shall be deemed waived. For the purpose of inspection and testing of the Water Facilities covered by this Agreement, Developer shall give the Company and its inspectors free access to the working places, and shall provide complete information whenever reasonably requested as to the progress of the work. The approval of work by the Company or its inspectors shall not relieve Developer from its obligations to comply in all respects with the Plans and Specifications, or to complete the work in accordance with this Agreement.

B. **Correction of Defects.** If at any time before the final completion and acceptance of the work any part of the work is found to be defective or deficient in any way, or in any way fails to conform to this Agreement, the Company is hereby expressly authorized to reject or revoke acceptance of such defective or deficient work and require Developer to do over and make good on such defective work. The Company specifically reserves the right to reasonably withhold approval and to forbid connection of the Water Facilities to the Company's system unless such Water Facilities have been constructed in accordance with the Plans and Specifications and other terms of this Agreement and are agreed satisfactory to the Company, in its reasonable discretion, upon inspection and testing. Developer agrees that it will promptly correct all defects and deficiencies in construction, materials and workmanship upon request by the Company made subsequent to inspection by the Company.

VI. INVOICES; LIENS; "AS-BUILT" PLANS.

A. **Invoices.** Developer shall furnish Company, within thirty (30) days after completion of construction, copies of Developer's, subcontractors', vendors' and all others' invoices for all engineering and other services, materials installed, construction performed, equipment provided, materials purchased and all else done for construction pursuant to this Agreement at the actual cost thereof.

B. **Liens.** Developer acknowledges its duty to obtain lien waivers from all entities providing labor, materials or services hereunder as soon as practicable, but in no event more than thirty (30) days after completion of construction. Developer hereby irrevocably waives any rights it may now have or which it may acquire during the course of this Agreement to record liens against the Company or its property. Developer shall also pay, satisfy and discharge all mechanics', materialmen's and other liens, and all claims, obligations and liabilities which may be asserted against the Company or its property by reason of, or as a result of, any acts or omissions of Developer, its employees, agents, servants, suppliers, or subcontractors, or the employees, agents, servants or suppliers of its subcontractors, in connection with or relating to the performance of this Agreement.

C. **"As-Built" Plans.** Developer agrees to furnish the Company, within thirty (30) days after completion of construction, "as-built" drawings (on reproducible Mylar) showing the locations of all water mains, hydrants, valves, and service connections to all structures served from Water Facilities constructed pursuant to this Agreement.

VII. AMOUNT OF ADVANCE; COMPUTATION OF REFUND; UNREFUNDED BALANCE OF ADVANCE; MAXIMUM REFUND; INTEREST ON ADVANCE; LIMITATION ON REVENUES INCLUDED; TRANSFER OF FACILITIES.

A. **Amount of Advance.** The cost of the Water Facilities, the \$2,000 charge to join the GRD (if applicable), and the Administrative Costs (collectively, the "Advance") shall be treated as refundable advances in aid of construction subject to refund in accordance with this Paragraph VII. Based on estimated costs and subject to receiving invoices pursuant to Paragraph VI.A, totaling at least the estimated cost, the Advance by Developer shall be a total of \$_____. If the actual construction cost differs from the estimated Advance, the Advance shall be the actual cost, to the extent supported by invoices provided.

B. **Computation of Refund.** Company shall refund annually to Developer an amount equal to ten percent (10%) of the gross annual operating revenues from water sales to bona fide customers of Company within the Development. Such refund shall be paid by Company on or before August 31 of each calendar year for the preceding July 1 to June 30 period, commencing August 31, _____, and continuing thereafter in each succeeding calendar year for a total of ten (10) years. Sales taxes, privilege taxes, excise taxes and regulatory assessments collected by Company from customers shall not be subject to refund.

C. **Unrefunded Balance of Advance.** Any balance remaining at the end of the ten-year refund period shall become non-refundable, in which case the balance not refunded shall be entered as a contribution in aid of construction on the accounts of Company.

D. Maximum Refund; Interest on Advance; Limitation on Revenues Included. The refund to Developer under this Agreement shall in no event exceed the amount of the Advance. No interest shall be paid by Company on the Advance. Company shall make no refunds from any revenues received from customers other than those located within the Development as identified in Attachment 1.

E. Transfer of Facilities. In the event of the sale, conveyance or transfer by Company, pursuant to the approval of the Arizona Corporation Commission, of any portion of its water system, including the Water Facilities serving the Development and installed pursuant to the terms of this Agreement, the Company's obligation under Paragraph VII.B hereto shall cease (except as to any payment which is then due) conditioned upon the transferee assuming, and agreeing to pay Developer, any sums becoming payable to Developer thereafter in accordance with the provision of Paragraph VII.B of this Agreement.

VIII. RISK; LIABILITY; INSURANCE.

A. Risk. Developer shall carry on all work required hereunder at its own risk until the same is fully completed and accepted by the Company and will, in case of accident, destruction or injury to the work or material before such final completion and acceptance, replace or repair forthwith the work or materials so injured, damaged or destroyed, to the reasonable satisfaction of the Company and at Developer's own expense.

B. Liability. Developer hereby assumes the entire responsibility and liability for injury or death of any person, or loss for damage to any property contributed to or caused by the negligence of Developer, its agents, servants, employees, or subcontractors in its construction of the Water Facilities or in connection therewith. Accordingly, DEVELOPER WILL INDEMNIFY AND HOLD HARMLESS the Company, its officers, directors, agents and employees from and against claims or expenses, including penalties and assessments, to which they or any of them may be subjected by reason of any injury, death, loss, claim, penalty, assessment or damage arising as a result of the actions of Developer, its agents, servants, employees, or subcontractors, and in case any suit or other proceeding shall be brought on account thereof, Developer will assume the defense of the Company at Developer's own expense and will pay all judgments rendered therein which are payable by the Company.

C. Insurance. Developer agrees to produce and maintain all insurance described below, including insurance covering the obligations assumed by Developer under Paragraph VIII.A and Paragraph VIII.B. Such coverages shall be in amounts adequate to cover the risk commensurate with the work to be performed under this Agreement.

1. Workmen's compensation in the benefit amounts, and occupational disease disability insurance, as required by the laws and regulations of the state.
2. Comprehensive general liability insurance, including operations and protective liability coverages when the work to be performed requires blasting. Developer's insurance shall specifically cover that risk.
3. Comprehensive automobile liability insurance covering all owned and non-owned automobiles or trucks used by or on behalf of Developer in connection with the work.

IX. NOTICE.

Notice under this Agreement shall be provided by certified U.S. mail, postage prepaid, to the following address, or to such other address as a party may give written notice of pursuant to this section:

COMPANY: Appaloosa Water Company
7861 East Gray Road
Scottsdale, AZ 85260
Attn.: Harold Friend

DEVELOPER: Arizona Land Development II, LLC
P.O. Box 5038
Chino Valley, AZ 86323

X. MISCELLANEOUS.

Developer represents and warrants that it is a duly formed entity, authorized to do business within Arizona. A copy of a resolution or other document acceptable to the Company authorizing entry into this Agreement is attached hereto as Attachment 2, and is incorporated herein by this reference. This Agreement shall only become effective and binding upon the Company and the Developer if approved in full by the Arizona Corporation Commission's Utilities Division Staff. In the event that it is not so approved, this Agreement shall be null and void and of no force or effect whatsoever. This Agreement may not be modified or amended except by a writing signed by both parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and expressly supersedes and revokes all other prior or contemporaneous promises, representations and assurances of any nature whatsoever with respect to the subject matter hereof. The remedies provided in this Agreement in favor of the Company or Developer shall not be deemed exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by the Company or Developer of any breach by provision of this Agreement nor any failure by the Company or Developer to insist on strict performance by the other of any provision of this Agreement shall in any way be construed to be a waiver of any future or subsequent breach by the other or bar the right of either to insist on strict performance by the other of the provisions of this Agreement in the future. Developer is an independent contractor and not an agent or employee of the Company. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the parties hereto and their respective successors and assigns.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Appaloosa Water Company

Arizona Land Development Company II, LLC

By Harold Friend
Its President
"Company"

By
Its _____
"Developer"

Date Approved:

ATTACHMENT 1

Legal Description

**Heritage Pointe, a portion of Section 9, Township 16 North, Range 2 West,
G&S RB&M, Town of Chino Valley, Yavapai County, Arizona.**

[need map]

ATTACHMENT 2

ATTACHMENT 3

Bill of Sale

Subject and pursuant to that certain Line Extension Agreement for Developer Installed Facilities (the "*Agreement*"), dated as of _____, 2005, by and between Appaloosa Water Company, an Arizona corporation (the "*Purchaser*"), and Arizona Land Development Company II, LLC an Arizona limited liability company (the "*Seller*"), for good and valuable consideration provided to Seller, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, transfers, conveys and assigns to Purchaser all right, title and interest of Seller in and to the Water Facilities (as defined in the Agreement) constructed to provide water service to the Development (as defined in the Agreement). Seller warrants title to the Water Facilities free and clear of all liens and encumbrances or security interests.

This Bill of Sale is made and delivered in accordance with, and is subject to, all of the representations, warranties and covenants set forth in the Agreement. In addition, Seller warrants that the Facilities will be free from all defects and deficiencies in construction, materials and/or workmanship.

This Bill of Sale may be executed in counterparts, all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, Seller and Buyer have duly execute this Bill of Sale as of this ____ day of _____, 2005.

SELLER:

**ARIZONA LAND DEVELOPMENT
COMPANY II, LLC**

By: _____

BUYER:

APPALOOSA WATER COMPANY

By: _____
Harold Friend, President

State of Arizona)
) ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, the _____ of ARIZONA LAND DEVELOPMENT COMPANY II, LLC., an Arizona limited liability company, on behalf of the limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL)

Notary Public

My commission expires _____

State of Arizona)
) ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of December, 2003, by Harold Friend, the President of APPALOOSA WATER COMPANY, an Arizona corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(SEAL)

Notary Public

My commission expires _____